Alaska Oil and Gas Association

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July 29, 1997

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Ms. Kumkum Ray
Department of the Interior
Minerals Management Service
381 Elden Street; Mail Stop 4700
Herndon, VA 20170-4817

AOGA Comments on MMS's Proposed Amendments to 30 CFR Part 251

Dear Ms. Ray:

The Alaska Oil & Gas Association (AOGA) is a trade association whose member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

We thank you for the opportunity to submit comments to MMS's Proposed Amendments to 30 CFR Part 251 (see attached comments).

If you have any questions, please call me at (907)272-1481.

Sincerely,

JUDITH M. BRADY
Executive Director

JMB:ts

Attachment

ALASKA OIL AND GAS ASSOCIATION'S COMMENTS TO
THE MINERALS MANAGEMENT SERVICE'S PROPOSED AMENDMENTS TO
30 C.F.R. PART 251
PUBLISHED AT 62 FR 6149 (February 11, 1997)

Section	Comments
251.1 (purpose)	The OCSLA authorized, rather than prohibited, responsible exploration and development of oil, gas and sulfur resources from the OCS. It is not intended to be a "catch-all" environmental protection statute, but rather to establish a framework for the orderly exploration and exploitation of the mineral lands of the United States. The proposed regulations appear to reverse the clear direction of the statute by prohibiting exploration where there is any "harm" or "damage" to living or economic resources or to the "human environment" -- no matter how slight. Further, "harm" and "damage" are undefined and are thus open to subjective interpretations. Finally, the definition of "human environment" has been dramatically expanded to include the "quality of life" (a highly subjective term which is not defined) of those affected -- even indirectly -- by the proposed OCS activities. AOGA fears that these subjective, undefined terms will be read expansively by those third parties who have, in the past, posed a myriad of challenges both to leases and pre-lease activities. These parties, some of whom are affected in only the most tangential way, could seek to thwart exploration activities by contending that increased production and use of fossil fuels would affect their "quality of life." Clearly such a result could not have been intended. Staying closer to the statutory language, with a more specific discussion of the varieties of interests sought to be protected, would be more in keeping with the OCSLA. Accordingly, AOGA recommends that 251.1(b) be revised to include the underlined word: "To ensure that you carry out G&G activities in a safe and environmentally sound manner as to prevent significant harm or damage . . . ." In addition, AOGA recommends that the current definition of "human environment" remain unchanged, as it currently sets forth the specific interests which MMS seeks to protect.

251.2 (definitions) The definition of "notice" as written appears to apply only to research. Yet the regulations also use the term as it applies to communications to be made to MMS regarding the modification of operations conducted under a permit. If MMS did not mean that all communications regarding changes in operations conducted under a permit are required to be in writing, MMS should say so clearly.

The definition of "third party" is greatly expanded in the proposed regulations and would have a significant detrimental impact on the oil and gas exploration industry. The current regulations subject the permittee (who physically acquires the data) to various conditions and require the permittee to make the data that is collected available to MMS subject to stringent confidentiality protections. Many permit conditions have to do with environmental protection during the physical acquisition of the data, and some conditions also subject the permittee to potential liability following completion of the acquisition activities.

The proposed regulations would go significantly further than the current regulations because they would subject the exploration companies which hold non-exclusive license rights in data -- not just permittees -- to the same conditions and liabilities imposed on permittees. These conditions not only make little sense when applied to mere licensees, but they would subject the licensee to the same potential liabilities as the permittee. These new requirements would require the renegotiation of hundreds of existing licensing agreements and will delay any new licensing agreements until new language is agreed upon -- a significant administrative expense and delay. They would also require mere licensees to reveal certain information to MMS such as the their identity and a description of the data which has been licensed -- information which is arguably not protected by the confidentiality provisions in Section 1350 of the OCSLA.

Further, subjecting mere licensees to these conditions could lessen the value of the data -- and raise the cost of receiving a license to the data -- to exploration companies. It is highly likely that companies will simply license less data, which would discourage acquisition companies

from acquiring the data in the first place. Eventually, the amount of OCS information available would decrease, which could affect the inclination to explore in the OCS.

In sum, AOGA fears that these proposed changes -- which include the possibility of compromised confidentiality, degraded economics, and increased regulatory burdens -- could reduce the acquisition and licensing of seismic data in Alaska's OCS. It may also alter the balance between industry and government in the OCS leasing process and ultimately threaten its viability. AOGA recommends that MMS not impose the proposed conditions upon mere licensees of data.

The definition of "archaeological resources" does not define "archaeological interest," giving no guidance to companies.

The definition of "human environment," as noted above, is broad and ambiguous and does not define "quality of life", which is an inherently subjective term. AOGA recommends that the current definition remain unchanged.

251.4(b)(2) This provision requires a company which performs proprietary research on seismic acquisition technologies to file a notice with the Regional Director, even where no data is collected. This is outside the scope of the OCSLA. AOGA recommends that the language "related to oil, gas and sulfur" be replaced with "during which data regarding the presence or absence of oil, gas and sulfur are collected."

251.5 If provision 251.4 were to remain unchanged (such that it applies to proprietary research), this section would arguably require that all results of that research be released to the public. This would deprive the permittee of the results of its private research without compensation, and would thus be unconstitutional.

In addition, this provision should provide a timetable for when the MMS must approve or disapprove a permit application. AOGA recommends that MMS add a provision such that MMS will publish a notice within ___ [10?] days after receiving the permit application and will approve or disapprove the application within ___ [45?] days after receiving it.

251.6(a)(2) As set forth above, the new reference to the "human environment" appears to grant to MMS the power to deny permits based upon subjective judgments regarding the "quality of life" of people who are otherwise unaffected by the activity itself. AOGA recommends that the current definition remain unchanged.

251.6(a)(7) The new regulation deletes the word "unreasonably." Thus, it appears to mandate that permittees cannot interfere at all -- to any extent -- with other users of the OCS. This could result in the prohibition of seismic acquisition in the OCS if another user asserted that the seismic activity interfered with its activities. This is clearly against the mandate of the OCSLA. There is no scientific or policy reason to require seismic acquisition to automatically be subjugated to other OCS users. AOGA recommends that the current regulation remain unchanged.

251.6(c) This new section adds a new requirement to "consult and coordinate your G&G activities with other users of the area. . . ." This revision is inappropriate from several standpoints. First, a company could be required to disclose its activities, and the location of those activities, to others including competitors. Of course, an exploration company's areas of interest -- especially prior to a lease sale -- are highly confidential and of great commercial value to that company. Accordingly, this revision could cause the company to lose some or all of its competitive advantage in an area.

Second, the consultation and coordination would be very difficult as a practical matter. It is impossible to predict every person who may use an area at a particular time and difficult to contact and "coordinate" with every other user. Further, it is unclear what result is mandated by the regulations should a conflict arise which cannot be resolved. Given that proposed section 251.6(a)(7) deletes the term "unreasonably," a third-party could argue that seismic acquisition activities are subjugated to all other OCS uses, although this would clearly be contrary to the mandate of the OCSLA.

AOGA recommends that section 251.6(c) be deleted in its entirety. In the alternative, AOGA recommends that the underlined words be added:

"You must also use a good faith effort to consult and coordinate your G&G activities with other users of the area . . . ."

251.6(d) This proposed regulation allows the Regional Director to determine which seismic acquisition technologies are the best available, safest, and economically feasible. It implies that the Regional Director may prohibit use of technologies which he or she does not deem to be the best available, safest, or economically feasible. Given the reality of rapidly developing technology, AOGA is concerned that the Regional Director may prohibit safe technologies merely because they are new and possibly not well known

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TRANSACTION REPORT

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FOR: MMS/ETD 7037871115

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"You must also use a good faith effort to consult and coordinate your G&G activities with other users of the area . . . ."

251.6(d) This proposed regulation allows the Regional Director to determine which seismic acquisition technologies are the best available, safest, and economically feasible. It implies that the Regional Director may prohibit use of technologies which he or she does not deem to be the best available, safest, or economically feasible. Given the reality of rapidly developing technology, AOGA is concerned that the Regional Director may prohibit safe technologies merely because they are new and possibly not well known to the Regional Director. Further, the Regional Director could use this provision to prohibit the use of a older, yet safe, technology merely because it is not as new as other technologies -- although it may better provide the type of data required by the exploration company and be cost-effective. Finally, this provision is redundant, as other provisions in the proposed regulations and in other acts and regulations already require permittees to operate in a safe manner. AOGA recommends that section 251.6(d) be deleted in its entirety.

251.7(a)(2) AOGA strongly objects to this provision. It attempts to mandate compliance with the requirements of the Coastal Zone Management Act. Regulations such as these may only be promulgated by the Secretary of Commerce. Further, the provision is redundant and serves no purpose as permittees must already comply with the Coastal Zone Management Act. AOGA recommends that section 251.7(a)(2) be deleted in its entirety.

251.8 This provision adds another new requirement by requiring a company which wishes to modify its permitted operations to submit a written request for approval of the modification -- regardless of whether the modification is minor or substantial. This is not always practical and may be quite costly to companies. For example, if a company has an MMS permit under Part 251 and is mobilized to begin acquiring seismic data, yet must make minor modifications to its proposed acquisition due to unforeseen circumstances, each hour that the company must stand by waiting for MMS approval is quite costly. In addition, the provision does

not provide a time limit by when MMS must approve or disapprove the modification.

AOGA recommends that the provision be revised to require a written request only for substantial modifications and that minor modifications can be requested orally. ("Substantial" and "minor" modifications should be defined.)

In the alternative, the provision could be revised to add the underlined words: "Before you begin modified operations, you must submit a written request <u>where feasible</u> describing the modifications . . . . <u>If it is not feasible to submit a written request due to timing or other constraints, MMS may accept an oral request</u>.

Finally, in addition, language should be added to require MMS to approve or disapprove an oral request within 24 hours.

251.11 See comments to Section 251.12 below.

251.12(a) Companies simply cannot comply with these new provisions given today's technologies and methods of processing and interpreting geological and geophysical data. For example, the exploration workstations now utilized allow users to continually process and interpret geological and geophysical data. These users could not possibly notify the Regional Director of all of the processing, reprocessing and interpreting that occurs -- it would require continual notification and would be burdensome and meaningless. Further, the provision requiring "immediate" notification, as opposed to the current 30 day notice, is burdensome and seems to be unnecessary. It is also confusing regarding when notification is to be supplied after processing and interpreting the data -- as these are continually ongoing. AOGA recommends that the provision be revised.

251.12(c)(3) AOGA does not understand the new requirement that the permittee provide data in a "quality" format. AOGA recommends that this be clarified.

251.12(d) The proposed regulation imposes the new requirement that limited use licensees constitutes a "transfer" of that data within the meaning of the OCSLA. As set forth above in its comments to the definition of "third party," AOGA strongly objects to this new requirement.

251.14(c) AOGA recommends that the officer responsible for decisions to disclose or protect data be unchanged. As MMS knows, wrongful disclosure of data could have disastrous consequences from a competitive standpoint and government officials who wrongfully disclose protected data are subject to severe criminal penalties. It is more logical to place such a crucial decision in the hands of the top official of MMS.